

Mosquito Control: Applicable Laws and Regulations

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Mosquito Control

Applicable Laws and Regulations

Note: *This annotated list of regulations is provided to you for your convenience. Official versions of all Massachusetts State statutes and regulations are available through the State House Bookstore. When reviewing the information provided in this list be aware that only summaries of the laws and regulations are provided. Prior to considering any legal action, make sure to get the complete, official version of the statute or regulation from the State House Bookstore. If you have questions about the applicability of a regulation for a particular situation in your town, please contact your town counsel or the specific state or local department that has jurisdiction for the enforcement of the regulation.*

A. LAWS: LISTED BY TOPIC

1. Public Health Nuisances

M.G.L. c. 111 §122 *Public Health Nuisances, Regulations Relative to Nuisances*

Authorizes the board of health to investigate, examine, destroy, and remove all nuisances, sources of filth, and causes of sickness within its town, which, in its opinion, may be injurious to public health. This provision further authorizes the board of health to make regulations for the public health and safety relative to any investigation, examination, destruction, or removal of nuisances.

M.G.L. c. 111 §123 *Public Health Nuisances, Abatement by Owner*

The board of health shall order the owner or occupant of any private premises, after notice, to remove any nuisance, source of filth, or cause of sickness within any amount of the time board deems reasonable. An owner shall forfeit up to \$1000 for every day during which the order is knowingly violated.

The Supreme Judicial Court has held that where a cause of sickness exists, it is not necessary, under statute, to give defendant notice before an order of the board of health is made to remedy the nuisance. Com. v. Collins, 154 N.E. 266, 257 Mass. 580 (1926).

M.G.L. c. 111 §124 *Public Health Nuisances, Service of Order for Abatement*

Abatement order shall be in writing and may be served personally on the owner, occupant, or his authorized agent, by registered mail, or by copy at the owner's last place of abode. If the residence or whereabouts of the owner or agent is unknown, the order can be served by posting a copy conspicuously on the premises or by advertising the abatement for at least three out of five consecutive days in a newspaper of general circulation within the municipality.

M.G.L. c. 111 §125 *Public Health Nuisances, Removal of Nuisance by Board*

Authorizes the board of health to remove a nuisance, source of filth, or cause of sickness, if the owner or occupant fails to comply with an abatement order issued by the board. The owner or occupant will be held responsible for all expenses incurred in the removal process.

M.G.L. c. 111 §127A *Public Health Nuisances, Adoption of State Sanitary Code*

Authorizes the Department of Public Health to adopt, and from time to time amend, a state sanitary code to deal with matters affecting the health and well being of the public. Penalties for code violations may not exceed \$500 for any one offense or \$25,000 or up to two years in jail for violations involving the improper disposal of infectious or physically dangerous medical or biological waste. This section does not limit the right of any board of health to adopt rules and regulations that it deems necessary for a particular locality under its jurisdiction, provided that the rules and regulations do not conflict with state law. Local boards of health will enforce the state sanitary code in the same way as local health rules and regulations; if, however, local boards of health fail, after a reasonable lapse of time, to enforce the code, the Department of Public Health is authorized to do so.

2. Improvements of Wetlands and Mosquito Control Projects

M.G.L. c. 252 §2 *Improvement of Low Land and Swamps, State Reclamation and Mosquito Control Board:*

The State Reclamation and Mosquito Control Board consists of members from the Department of Environmental Quality Engineering, the Department of Food and Agriculture, and the Department of Environmental Management. The Board will serve within the Department of Food and Agriculture. The Board is responsible for reclaiming swamps, marshes, beaches, and other low lands, for removing obstructions in rivers or streams, and for eradicating mosquitoes or executing other mosquito control measures in Massachusetts pursuant to its grant of authority in c. 252 §1.

M.G.L. c. 252 §3 *Improvement of Low Land and Swamps, Mosquito Control Board Investigations and Reports*

The State Reclamation and Mosquito Control Board has the power to investigate the use of wet lands, including meadows, swamps, marshes, beaches, and other low lands, and can determine which lands, if any, can be drained for agricultural or industrial uses, for the protection of public health, or for other purposes. It can also publish and disseminate facts gathered during any such investigation and can publish surveys of tracts of land in need of drainage.

M.G.L. c. 252 §5 *Improvement of Low Land and Swamps, Petition to the Board, Investigations, Appointment and Compensation of District Commissioners*

If the proprietors of any meadow, swamp, marsh, beach, or other low lands, as described in c. 252 §1, wish to improve their land, they can petition the State Reclamation and Mosquito Control Board, explaining the necessity or desirability of the requested improvements and what is to be accomplished. After receiving the petition, the Board will investigate the proposal and determine whether the improvements are advisable and practicable. If they are deemed to be advisable and practicable, the Board will give notice of a hearing date and time. The hearing will be held no later than 7 days after the date of notice. After the hearing, if the Board grants its approval, it will determine whether the organization of a reclamation district is necessary to construct or maintain the proposed improvements.

M.G.L. c. 252 §5A *Improvement of Low Land and Swamps, Mosquito Control*

If the State Reclamation and Mosquito Control Board determines, after completing the procedures set forth in §5, that the proposed improvements should be made, and that they can be effectuated without the organization of a reclamation district, it will notify all persons or official bodies to be benefited by the improvements of their estimated expense. Upon receiving funds sufficient to cover the estimated expenses, the Board will designate an “identifying name” under which the improvements shall be made, will deposit the money collected with the state treasurer to hold (in a “Mosquito and Greenhead Fly Control” fund) or disburse as necessary to complete the project, and will appoint one or more commissioners to carry out the improvements. If any city or town has been included in an area designated by an “identifying name” as a mosquito control project for the purposes of this section, but has subsequently withdrawn from membership in such project, it can, with the approval of the Board and subject to any Board conditions, vote to become a member of the existing mosquito control project within its area. All mosquito control projects will be assessed annually by the Mosquito and Greenhead Fly Control fund relative to their proportional share of expenses for the administration of the State Reclamation Board.

M.G.L. c. 252 §5B *Improvement of Low Land and Swamps, Local Boards of Health, Power to Determine Mosquito Breeding Area a Public Nuisance*

The Board of Health of a city or town, or the commissioners appointed to make improvements under §5A on behalf of a mosquito control district, may determine that an area infested by mosquitoes, or likely to produce mosquitoes within the city or town limits, is a public nuisance. If, after notice from the Board of Health, the owner, occupant, or person in charge of such area refuses or neglects to abate the nuisance, the Board of Health or the commissioners can do so. The Board of Health can also institute measures to prevent any recurrence of the nuisance, and may employ all necessary assistants for this purpose. These assistants are authorized to enter public or private property if required.

The Restatement (Second) of Torts defines public nuisance as “an unreasonable interference with a right common to the general public.” It further states that public nuisances can be found when conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience, or when conduct is specifically proscribed by a statute, ordinance, or administrative regulation. Finally, the Restatement notes that a nuisance may be found when conduct is of a continuing nature or has produced a permanent or long-lasting effect upon a public right. Restatement (Second) of Torts §821B (1979).

M.G.L. c. 130 §105 *Marine Fish and Fisheries, Protection of Coastal Wetlands*

Authorizes the commissioner of environmental protection to adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting the dredging, filling, removal, alteration, or pollution of coastal wetlands for the purpose of promoting public health and safety. No action taken under this section prohibits, restricts, or impairs the exercise or performance of the powers and duties of the State Reclamation Board or any mosquito control project operating or authorized under c. 252.

M.G.L. c. 131 §40 *The Wetlands Protection Act, Inland Fisheries and Game and Other Natural Resources*

Governs the removal, fill, dredging, or altering of any bank, riverfront area, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, as well as any land subject to tidal action, coastal storm flowage, or flooding. Under this provision, the term “riverfront area” does not apply to any mosquito control work done under clause 36 of c. 40 §5, under c. 252, or under any special act related to mosquito control. Moreover, the provisions of the entire section do not apply to any mosquito control work done under the aforementioned chapters.

M.G.L. c. 131 §40A *The Wetlands Protection Act, Orders Protecting Inland Wetlands*

Authorizes the commissioner of environmental protection to amend or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering or polluting inland wetlands for the purpose of promoting the public safety and the preservation of natural resources. No order promulgated under this provision prohibits, restricts, or regulates the exercise of the powers of the State Reclamation Board or any mosquito control or other project operating under c. 252.

3. Pesticides and Pollution Control:

M.G.L. c. 132B §6C *Massachusetts Pesticide Control Act, Pesticide Use at Schools/Standard Written Notification*

Information about a scheduled pesticide spraying, release, deposit, or application must be provided to school administrators, day care operators, or school age childcare program operators by those responsible for carrying out the spraying at least two working days before its commencement. However, larval mosquito control applications using pesticides classified as category four by the EPA, as applied by mosquito control projects under c. 252, are exempt from these notification requirements.

M.G.L. c. 132B §6D *Massachusetts Pesticide Control Act, Posting of Standard Written Notification of Pesticide Use at Schools*

Standard written notification must be posted in a common area of a school, day care center, or other child care program at least two working days before the outdoor spraying, release, deposit or application of a pesticide and for at least 72 hours following such spraying. However, larval mosquito control applications using pesticides classified as category four by the EPA, as applied by mosquito control projects under c. 252, are exempt from these notification requirements.

M.G.L. c. 91 §59 *Waterways, Discharge of Petroleum Products*

Those who pump, discharge, or deposit, or cause to be pumped, discharged, or deposited, any crude petroleum or petroleum product into lakes, rivers, or tidal waters so as to pollute the waters, cause a nuisance, or injure public health, will be punished by a fine of not more than \$1000. However, this section shall not be construed to prohibit the use of oil for the extermination of mosquitoes or other insects.

M.G.L. c. 91 §59A *Waterways, Tort Liability for Discharge or Deposit of Crude Petroleum*

Those who negligently pump, discharge, or deposit any crude petroleum or petroleum products into a lake, river, tidal waters, or flats so as to cause damage to another's property will be held liable for damages amounting to double the cost of the estimated injury. However, the use of oil for extermination of mosquitoes or other insects on any lake, river, tidal water, or flats by a town, city, or mosquito control project acting under c. 252 shall not be deemed to be a violation of this provision, as long as the use of the oil conforms to the rules and regulations promulgated by the pesticide board.

4. **Laws Related to Public Health Oversight:**

M.G.L. c. 17 §2A *Department of Public Health, Powers of Commissioner Upon Declaration of Emergency*

Upon declaration by the governor of a public health emergency, the Commissioner of Public Health may, subject to the approval of the governor and the public health council, take action to assure the maintenance of public health and the prevention of disease.

M.G.L. c. 21 §17B *Department of Environmental Management, Division of Water Resources, Orders Concerning Scenic and Recreational Rivers and Streams*

Authorizes the commissioner of environmental management, with the approval of the board of environmental management, to adopt, amend, modify, or repeal orders regulating or prohibiting the dredging, filling, removing, altering, or polluting of scenic and recreational rivers and streams for the purpose of promoting public health, welfare, or safety. No order promulgated under this provision prohibits, restricts, or regulates the exercise of the powers of the State Reclamation Board or any mosquito control or other project operating under c. 252.

M.G.L. c. 40 §8C *Powers and Duties of Cities and Towns, Conservation Commission*

Authorizes cities and towns to establish conservation commissions for the promotion and development of natural resources and for the protection of watershed resources. No action taken under this section affects the powers and duties of the State Reclamation Board or any mosquito control project operating under M.G.L. c. 252.

M.G.L. c. 41 §81U *Cities, Towns and Districts, Subdivision Control, Approval, Modification, or Disapproval of Plan by Board*

When a subdivision plan is submitted to the planning board, it should also be filed with the board of health, which has 45 days to approve or disapprove the plan. If the board of health disapproves the plan, it must report specific findings as to which areas in the proposed plan cannot be used without injury to the public health. Failure to issue such a report will be deemed approval of the plan by the board of health. The board of health is authorized to approve a plan subject to the condition that no building or structure shall be built in designated areas without the consent of the board of health.

The Supreme Judicial Court has found that evidence that pockets of stagnant water become breeding places for mosquitoes supports a finding that requirements imposed by a planning board to pipe a brook and fill certain lots as a condition for approval of a proposed subdivision plan are not unreasonable. United Reis Homes, Inc. v. Planning Board of Natick, 359 Mass. 621, 270 N.E.2d 402 (1971).

M.G.L. c. 111 §31 *City and Town Health Boards, Health Regulations, Summary Publication, Hearings, Filing Sanitary Codes and Related Rules*

Authorizes local boards of health to make reasonable health regulations. Those who violate any health regulation promulgated by a board of health shall be punished by a fine of not more than \$1000, as long as no other penalty is provided by law.

The Supreme Judicial Court has held that subdivision plans are to comply with reasonable recommendations of the board of health, and that planning boards have the power to incorporate in their approval of subdivision plans any reasonable conditions recommended by the board of health related to drainage. United Reis Homes, Inc. v. Planning Bd. Of Natick, 270 N.E.2d 402, 359 Mass. 621 (1971).

B. REGULATIONS: **LISTED BY DEPARTMENTAL JURISDICTION**

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1. MA Department of Public Health: Min. Standards for Fitness for Human Habitation

Note: Regulations pertaining to garbage, insect (screens) and rodent control may also be found in specific regulations pertaining to: Housing and Sanitation Standards for Farm Labor Camps— 105 CMR 420.000; Recreational Camps for Children—105 CMR 430.000; Family-Type Campgrounds— 105 CMR 440.000; Correctional facilities—105 CMR 451.000; and Sanitation Standards for DYS Secure Residential Facilities—105 CMR 450.000.

105 CMR 410.551 *Minimum Standards of Fitness for Human Habitation, Screens for Windows*

An owner shall provide screens for all windows designed to be opened directly to the outside on the first four floors of any dwelling or room unit. However, in the case of an owner-occupied unit, the owner need only provide screens for those windows used for ventilation.

105 CMR 410.552 *Minimum Standards of Fitness for Human Habitation, Screens for Doors*

An owner shall provide a screen door for all doorways opening directly to the outside where the door slides to the side or opens in an outward fashion. However, in the case of an owner-occupied unit, the owner need only provide screens for those doorways used for ventilation.

105 CMR 410.553 *Minimum Standards of Fitness for Human Habitation, Installation of Screens*

An owner shall provide and install screens as provided in 105 CMR 410.551 and 410.552 so that they are in place during the period of April 1st to October 30th every year.

105 CMR 410.600 *Minimum Standards of Fitness for Human Habitation, Storage of Garbage and Rubbish*

Garbage or rubbish shall be stored in watertight receptacles with tight-fitting covers. Plastic bags shall be used to store garbage or rubbish only if used as a liner in watertight receptacles with tight-fitting covers. Plastic bags may be put out for collection if the practice is not prohibited by local rule and is not determined by the Department of Public Health to be a health problem.

105 CMR 410.601 *Minimum Standards of Fitness for Human Habitation, Collection of Garbage and Rubbish*

The owner of any rooming house or dwelling that contains three or more units, as well as the occupant of any other dwelling place, is responsible for the collection, disposal, or incineration of garbage or rubbish. When lawful, this may be accomplished by backyard composting, provided that the composting does not attract rodents or other vectors and does not create a nuisance, and provided that the occupant obtains the prior consent of the owner.

105 CMR 410.602 *Minimum Standards of Fitness for Human Habitation, Maintenance of Areas Free from Garbage and Rubbish*

The owner of any parcel of land shall be responsible for maintaining it in a clean and sanitary condition, free from garbage, rubbish, or other refuse. The owner of the land shall correct any condition which affects the health, safety, or well being of the occupants of any dwelling on the land or appurtenant to the land, as well as the general public. The occupant of any dwelling unit shall be responsible for maintaining the part of the dwelling, which he exclusively occupies or controls, in a

clean and sanitary condition, free from garbage, rubbish, or other causes of sickness. In a dwelling containing less than three units, the occupant shall also be responsible for maintaining the stairs and/or landing leading to the unit in a clean and sanitary condition, free of garbage, rubbish, or other causes of sickness, provided that the stairs or landing are not used by another occupant. In any dwelling, the owner is also responsible for maintaining all common areas in a clean and sanitary condition, free of garbage, rubbish, or other causes of sickness.

105 CMR 410.750 *Minimum Standards of Fitness for Human Habitation, Conditions Deemed to Endanger or Impair Health or Safety*

Failure to comply with any provisions of CMR 410.600, 410.601, or 410.602 which results in an accumulation of garbage, rubbish, filth, or other causes of sickness which may provide a food source for or harbor rodents, insects, or other pests or contribute to the creation or spread of disease, will be deemed a condition which may endanger or impair the health or safety of a person or persons occupying any given premises. Similarly, failure to eliminate insect infestations and other pests as required by 105 CMR 410.550 within a period of 5 days following notice of the problem to the owner will be deemed a condition which may endanger or impair the health or safety of an occupant.

2. MA Department of Agricultural Resources: Pesticide Board

333 CMR 13.04 *Pesticide Board, Exclusions for Application*

No intentional application of pesticides shall be made to private property, which has been designated for exclusion by a person living on or in legal control of the property. Designation for exclusion can be made by supplying the clerk of the municipality in which the land lies with a certified letter providing the name, address, telephone number, names of all abutters, and defining programs from which the exclusion is requested. However, a request for exclusion will not be honored when the Commissioner of Public Health has certified that the pesticide application is to protect the public health.

333 CMR 13.05 *Pesticide Board, Application by Aircraft*

All who elect to control pests by the use of pesticides applied by aircraft shall do so only after receiving a permit issued by the Department. However, pesticide applications carried out by mosquito control programs approved by the State Reclamation Board are exempt from these provisions. Mosquito larvicide applications carried out by mosquito control projects approved by the State Reclamation Board are also exempt if notice of the proposed application is published in a newspaper of general circulation in the affected municipality between February 1 and March 1 of the year the application is intended to be made, and if notice is provided to the Department and the board of health of the municipality prior to the application.

333 CMR 10.03 *Pesticide Board, Certification and Licensing of Pesticide Applicators*

Every commercial applicator that falls into one of the categories defined in this regulation and uses or supervises the use of a restricted or state limited use pesticide must be certified. Category 8, Public Health Pest and Nuisance Control, includes applicators that use or supervise the use of pesticides to water or to public and private lands to control pests considered to be serious nuisances or potential disease carriers and thus of public health or medical importance, and specifically includes in 8(b) applicators who control mosquitoes.

3. MA Department of Agricultural Resources: Division of Water Pollution Control

314 CMR 9.04 *Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth, Activities Requiring an Application*

Routine maintenance of mosquito control projects that will result in the annual loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetland and land underwater will be evaluated by the criteria of 314 CMR 9.06.

314 CMR 9.06 *Criteria for Evaluation of Applications for Discharge of Dredged or Fill Material*

This section provides guidelines for the discharge of dredged or fill material, as well as specific criteria that must be met before an application for discharge of dredged or fill material is approved.

4. MA Department of Environmental Protection: Division of Fisheries and Wildlife

321 CMR 11.06 *Nature Preserves, Management of Nature Preserves*

Nature preserves are established to preserve and protect the natural communities of an area. Insect or disease control programs shall not be undertaken unless the infestation or outbreak threatens adjacent natural areas, will drastically alter natural ecological processes within the nature preserve, or a public health emergency is declared under c.17, provided that the insect control programs are approved by the managing agency or provided for by law.

321 CMR 10.04 *Massachusetts Endangered Species Act, Taking and Possession of Species on State and Federal Lists*

Mosquito control districts are not exempt from the Massachusetts Endangered Species Act, as codified in c.131A. However, the Director may permit the removal, capture, or destruction of any state listed species to protect human health during the period and within the geographic area of a public health emergency, as declared by the Department of Public Health and the public health council under c.17, provided that the Director has undertaken all reasonable efforts to avoid the removal, capture, or destruction of the species.

Housing and Sanitation Standards for Farm Labor Camps

105 CMR 420.535- Ventilation and Screening of Toilet Facilities

The operator shall screen each window or other exterior opening of each toilet room, privy or chemical toilet room with screens containing no less than 16 meshes per inch.

105 CMR 420.430 - Effective Measures Required Against Insects and Rodents

The operator shall take effective measures to prevent the breeding and to protect the premises from the entrance of rodents, flies, roaches and other vermin.

105 CMR 420.431 - Screening

The operator shall provide the exterior openings in every building of the farm labor camp used for human habitation with screens containing not less than 16 meshes per inch. All screen doors shall be tight fitting, in good repair and equipped with self-closing devices.

105 CMR 420.602 - Refuse Storage

Garbage shall be stored in fly-tight, covered, and watertight receptacles of metal or other durable material.

Recreational Camps for Children

105 CMR 430.350 - Facilities for Solid Waste Storage

Garbage and mixed garbage and rubbish shall be stored in watertight receptacles with tight fitting covers.

105 CMR 430.401 - Weed Control

The growth of brush, weeds, grass and plants shall be controlled in central camp areas to minimize harborage of ticks, chiggers, and other insects, which may adversely affect public health.

105 CMR 430.452 - Screening Required

The operator shall provide the exterior openings in every building used for food preparation, food service, and every permanent building used for sleeping with screens containing not less than 16 meshes per inch. Every screen door shall be provided with a self-closing device.

Family-Type Campgrounds

105 CMR 440.08 - Toilet Facilities

The operator shall screen each window or other exterior opening with screens containing not less than 16 meshes per inch. A self-closing solid door shall be considered as satisfying this requirement.

105 CMR 440.11(2) - Refuse Storage and Disposal

Refuse shall be stored in watertight receptacles of metal or other durable material with tight fitting covers.

Correctional Facilities

105 CMR 451.141 - Screens

Each window and door that is used for ventilation to the exterior shall have tight-fitting screens with a minimum of 16 meshes per inch. Each screen door shall be equipped with a self-closing device unless the door is designed to slide to the side.

105 CMR 451.370 - Garbage Storage

Garbage or mixed garbage and rubbish should be stored in a sanitary manner in watertight easily cleanable receptacles of metal or other durable non-absorbent material.

Sanitation Standards for DYS Secure Residential Facilities

105 CMR 450.141 - Screens

Each window and door used for ventilation to exterior shall have tight-fitting screens with minimum of 16 mesh per inch. Each door shall have a self-closing device. Screens need to be in place for all food service facility windows at all times, all other windows April 15 - October 30.

105 CMR 450.370 - Garbage Storage

105 CMR 450.371 - Rubbish Storage

All rubbish shall be stored in enclosures or containers constructed or lined with metal or other durable material that is non-absorbent, easily cleanable and insect proof.

Application of Pesticides To Wetland Resource Areas and Buffer Zones, and
Public Water Systems

Effective Date: July 3, 2001

Guideline No. BRPG01-02

Program Applicability: Local Conservation Commissions, Boards of Health, and Public Water Suppliers; and DEP Wetlands and Drinking Water Programs—Web Link:
<http://www.state.ma.us/dep/brp/dws/files/WNVPolcy.doc>